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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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11 CORY SPENCER, an individual;
DIANA MILENA REED, an
12 individual; and COASTAL
PROTECTION RANGERS, INC., a
13 California non-profit public benefit
corporation;

14 Plaintiffs,

15 v.

16 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but
17 not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON aka
18 JALIAN JOHNSTON, MICHAEL
RAE PAPAYANS, ANGELO
19 FERRARA, FRANK FERRARA,
CHARLIE FERRARA, and N.F.; CITY
20 OF PALOS VERDES ESTATES;
CHIEF OF POLICE JEFF KEPLEY, in
21 his representative capacity; and DOES 1
– 10,

22 Defendants.
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Case No. 2:16-cv-02129-SJO-RAO

**REPLY BY DEFENDANT MICHAEL
R. PAPAYANS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE FOR SUMMARY
ADJUDICATION OF CLAIMS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

[Fed. Rules Civ. Proc., Rule 56]

Date: September 5, 2017
Time: 10:00 a.m.
Place: Courtroom 10C
350 W. 1st Street
Los Angeles, California 90012

Hon. S. James Otero

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25 Defendant Michael R. Papayans (“Papayans”) submits this Reply in support
26 of his Motion for Summary Judgment, or in the Alternative Summary Adjudication
27 of Claims.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF REPLY

Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc. (“CPR”), a California corporation (“Plaintiffs”), take issue with Defendant Papayans’ description of their deposition testimony. Plaintiffs argue that they testified they “did not recall” and “did not remember” seeing Papayans. Plaintiffs’ Statement in Opp. to Papayans’ Motion, Nos. 1, 3. These arguments do not create disputed issues of material fact. Plaintiffs never met or interacted with Papayans, and they have offered no evidence to the contrary.

Plaintiffs’ claims against Papayans rest on their contention that he is an alleged co-conspirator. But Plaintiffs do not have evidence sufficient to support these conspiracy claims or defeat summary judgment.

Plaintiffs’ primary opposition is based on their Motion for Administrative Relief seeking leave to discover additional evidence. If for any reason the Court is inclined to grant the Plaintiffs’ administrative motion, Papayans requests that the summary judgment motion be continued for further briefing.

II. FACTS

A. Plaintiffs Admit they Did Not Meet or Interact with Papayans

Plaintiffs have not genuinely disputed Papayans’ facts. Plaintiffs argue:

- “Plaintiff Spencer did not testify that he did not see [Papayans] at Lunada Bay. He testified that he did not recall seeing him.”
- “Plaintiff Reed did not testify that she did not see Papayans at Lunada Bay. She testified that she did not remember personally seeing him.”
- “Plaintiff Reed testified that she did not have a personal encounter with Papayans.”

1 Plaintiffs also admit that “Spencer does not know if Papayans was at Lunada Bay
2 when Spencer was at Lunada Bay.” Plaintiffs’ Statement in Opp. to Papayans’
3 Motion, Nos. 1 - 4.

4 Technical arguments as to the characterization of deposition testimony do not
5 create genuine disputed issues of material fact. Plaintiffs have no evidence that they
6 personally met or interacted with Papayans. Plaintiffs have not raised a genuine
7 dispute as to Papayans’ uncontroverted facts Nos. 1 – 4.

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9 **III. ARGUMENT**

10 **A. Plaintiffs Do Not Have Evidence of Specific Facts Showing a**
11 **Genuine Issue of Material Fact for Trial**

12 “One of the principal purposes of the summary judgment rule is to isolate and
13 dispose of factually unsupported claims” *Celotex Corp. v. Catrett* (1986) 477
14 U.S. 317, 324-325. “[FRCP] Rule 56(e) therefore requires the nonmoving party to
15 go beyond the pleadings and by her own affidavits, or by the “depositions, answers
16 to interrogatories, and admissions on file,’ designate ‘specific facts showing that
17 there is a genuine issue for trial.’” *Celotex*, 477 F.3d at 324.

18 Plaintiffs have not offered evidence of specific facts sufficient to show a
19 genuine issue of material fact for trial.

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21 **B. Papayans Did Not Meet, Touch, Batter, or Assault the Plaintiffs**

22 Papayans did not meet or interact with the Plaintiffs, much less touch them.
23 Papayans is entitled to judgment on the claims for assault and battery.

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25 **C. Plaintiffs Do Not Have Evidence that Papayans Is a Conspirator**

26 All of Plaintiffs’ claims against Papayans rest on the assertion that he is part
27 of a civil conspiracy. “To prove a civil conspiracy, the plaintiff must show that the
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1 conspiring parties ‘reached a unity of purpose or a common design and
2 understanding, or a meeting of the minds in an unlawful arrangement.’” *Gillbrook*
3 *v. City of Westminster*, 177 F.3d 839, 856-57. As Papayans cited in his motion:

4 They must show that each member of the conspiracy acted in concert
5 and came to a mutual understanding to accomplish a common and
6 unlawful plan, and that one or more of them committed an overt act
7 to further it. It is not enough that the [alleged conspirators]
8 knew of an intended wrongful act, they had to agree – expressly or
9 tacitly – to achieve it. Unless there is such a meeting of the minds, ‘the
10 independent acts of two or more wrongdoers do not amount to a conspiracy.’
11 *Choate v. County of Orange*, 86 Cal.App.4th 312, 333 (2000) (citations omitted).

12 Plaintiffs separate statement asserts several alleged “facts” as to Papayans, but
13 the actual evidence in support of these alleged facts appears to be as follows:

- 14 • Defendant Sang Lee testified that on January 7, 2011 – over 6 years ago –
15 he sent an email to approximately 22 people, one of whom he said was
16 “Michael Papayans.” *See* Plaintiffs’ Additional Facts, No. 25, p. 39, l. 20.

17 It is not clear if Lee was referring to Defendant Michael Papayans or to his
18 uncle, who is also named Michael Papayans.

- 19 • Non-Party Jordan Wright submitted a Declaration in Support of the
20 Plaintiffs’ Motion for Class Certification [Docket 159-9, ¶ 18] stating:
21 “I’ve seen Brant Blakeman, whom I understand to be a Bay Boy,
22 surfing Lunada Bay on many occasions. I recognize Blakeman
23 because he uses a green kneeboard and he is regularly filming
24 visitors on land with a camcorder. I believe his filming is an effort
25 to intimidate visitors. In the water, he seems to direct other Bay Boys
26 to sit close to visiting surfers. I’ve observed Bay Boys who seem to be
27 assigned to visiting surfers—they’ll sit too close to the visitors, impede
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1 their movements, block their surfing, kick at them, splash water at them,
2 and dangerously drop in on them. On one occasion, I saw people whom
3 I believe to be Bay Boys in a boat with surfboards threatening visitors.
4 In addition to Blakeman, I’ve seen Michael Papayans, Sang Lee, Alan
5 Johnston, Charlie Ferrara, and David Mello engage in this activity.”

6 See Plaintiffs’ Additional Facts, No. 41, p. 89, l. 20; Wright Decl., ¶ 18.

7 It is not clear precisely what “activity” Wright allegedly saw from Papayans.

- 8 • Non-Party Christopher Taloa testified that Papayans allegedly said: “We
9 own the cops.” See Plaintiffs’ Additional Facts, No. 46, p. 96, ll. 22-24;
10 Taloa Depo. 306:21-24.

11 It is not clear precisely what this alleged statement means.

- 12 • In or about March 2014, Papayans got into a non-physical shouting match
13 with Taloa, who called the Police but did not press charges:

14 Q. And you indicated to them [the Police] that you didn’t want to
15 press charges?

16 A. I didn’t want to press charges. * * *

17 Q. And you said he [Papayans] didn’t do anything to me?

18 A. He didn’t get physical with me.

19 Q. Okay. That’s what you meant? He didn’t get physical with you?

20 A. He didn’t get physical with me.

21 Papayans’ MSJ, Exhibit 4, Taloa Depo., 345:1-3; 365:17-21.

22 This incident is evidence of a shouting match, not an alleged conspiracy.

23 None of this evidence shows “a mutual understanding to accomplish a common and
24 unlawful plan[.]” *Choate*, 86 Cal.App.4th at 333.

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1 **D. There Is No Evidence of Acts of Public Nuisance by Papayans**

2 Papayans did not meet or interact with the Plaintiffs, and there is no evidence
3 of any substantial, unreasonable interference by Papayans: “To qualify as a public
4 nuisance, the interference must be both substantial and objectively unreasonable.”
5 *Citizens for Odor Nuisance Abatement v. San Diego*, 8 Cal.App.5th 350, 358 (2017).

6 Papayans has not caused the Plaintiffs any harm. “Causation is an essential
7 element of a public nuisance claim. A plaintiff must establish a ‘connecting
8 element’ or a ‘causative link’ between the defendant’s conduct and the threatened
9 harm. * * * A plaintiff must show the defendant’s conduct was a ‘substantial factor’
10 in causing the alleged harm. *Citizens for Odor Nuisance Abatement v. City of San*
11 *Diego*, 8 Cal.App.5th 350, 359 (2017).

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13 **E. There Is No Evidence of Constitutional Interference by Papayans**

14 California’s Bane Act provides legal or equitable relief for an “individual
15 whose exercise or enjoyment of [federal or state constitutional] rights ... has been
16 interfered with, or attempted to be interfered with” *California Civil Code*
17 §52.1(b). Plaintiffs must prove that Papayans interfered with, or attempted to
18 interfere with, the Plaintiffs’ exercise or enjoyment of their constitutional rights.

19 Papayans did not meet or interact with the Plaintiffs, and he did not interfere
20 with their constitutional rights.

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22 **F. Plaintiffs Have Conceded the Negligence Claim**

23 Plaintiffs do not oppose Papayans’ motion as to the negligence claim.
24 Papayans is entitled to judgment on that claim.

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1 **G. Plaintiff CPR Asserts Previously Denied Class Claims**

2 The Plaintiff CPR entity asserts claims on behalf of an alleged class, namely
3 CPR’s alleged “members.” Plaintiffs’ Opp. to Individual Defendants MSJs, p. 18,
4 ll. 11-28. This is an attempt to circumvent the Court’s denial of Plaintiffs’ class-
5 certification motion.

6 Regardless, there is no evidence sufficient to support any claim by CPR
7 against Papayans.

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9 **IV. CONCLUSION**

10 The Plaintiffs have not met or interacted with Papayans, and they have no
11 evidence sufficient to show that he is an alleged co-conspirator, gang, or association
12 member. There is no issue of material fact, and Papayans is entitled to judgment.

13 Plaintiffs’ primary opposition consists of their motion for administrative relief
14 to obtain further discovery. If for any reason the Court is inclined to grant the
15 Plaintiffs’ administrative motion, Papayans requests that the summary judgment
16 hearing be continued for further briefing.

17 Papayans joins in the summary judgment replies of all other Defendants.
18 *Vazquez v. Central States Joint Bd.*, 547 F.Supp.2d 833, 867. (N.D.Ill. 2008).

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20 DATED: August 17, 2017 HAVEN LAW

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22 By: /s/ Peter T. Haven
23 Peter T. Haven
24 Attorney for Defendant
25 MICHAEL R. PAPAYANS